

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 03, 2025**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ELMER L. H.,<sup>1</sup>

Plaintiff,

v.

LELAND DUDEK, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>

Defendant.

No: 1:24-cv-03120-RLP

ORDER

<sup>1</sup> The court identifies a plaintiff in a social security case by only the first name and last initial in order to protect privacy. *See* LCivR 5.2(c).

<sup>2</sup> On February 18, 2025, Leland Dudek became the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Rules of Civil Procedure, Leland Dudek is substituted for Martin O'Malley as the Defendant in this suit.

ORDER \* 1

1 BEFORE THE COURT is an appeal from an Administrative Law Judge  
2 (ALJ) final decision denying Supplemental Security Income disability benefits.  
3 The Court considered the matter without oral argument. As the parties agree, the  
4 ALJ failed to analyze the opinion of a doctor who found Mr. H.'s learning  
5 disability markedly limited his ability to work. The only disputed issue is the  
6 proper remedy. Mr. H. argues the Court should remand for a finding of disability  
7 and immediate award of benefits. The Commissioner claims the Court should  
8 remand for further proceedings. The Court sides with the Commissioner. Mr. H.  
9 makes a strong argument in favor of disability. But because there is conflicting  
10 evidence on this front, this is not a rare case where this Court will order an  
11 immediate award of benefits.

12 Therefore, Mr. H.'s brief, ECF No. 8, is granted in part and denied in part  
13 and the Commissioner's brief, ECF No. 14, is granted.

#### 14 BACKGROUND

15 Mr. H. was born in 1988. At the age of two, he was in a car accident and  
16 sustained a traumatic brain injury. Growing up, he has experienced severe learning  
17 difficulties. He also struggles with anxiety, depression, and possible attention deficit  
18 hyperactivity disorder. Mr. H. was placed in special education classes and dropped  
19 out from school during his junior year. He does not hold a high school diploma or  
20 GED.

1 Mr. H. experiences significant difficulties with transportation. He has not been  
2 able to obtain a driver's license, due to repeated inability to pass the licensing test.  
3 He is too fearful to use public transportation. And he struggles to walk more than a  
4 couple blocks away from his home, as he finds self-navigation confusing.

5 Mr. H. has never held a formal job. He unsuccessfully tried to work at his  
6 father's farm at age 18. He has tried volunteer work at Goodwill and the Humane  
7 Society. The experience at Goodwill was unsuccessful. According to Mr. H.'s  
8 medical records, he experienced suicidal ideation on one occasion when he could not  
9 perform as expected. At the Humane Society, Mr. H. was unable to walk the dogs,  
10 but he performed some simple cleaning tasks. According to Mr. H.'s mother, he had  
11 one "freakout" experience at the shelter when he lost track of what he was doing.  
12 ECF No. 6 at 801. Mr. H.'s volunteer work ended due to the COVID-19 pandemic.  
13 He has not returned to volunteering since that time.

14 Mr. H. has a bank account he uses to pay bills with the help of his mother. He  
15 also helps out with chores at home, with reminders to perform them. Mr. H. does not  
16 have any children. Mr. H. has few, if any, friends. His primary relationships are with  
17 his mother, brother, and niece. Mr. H. plays computer games, and has reported doing  
18 well on computers.

19 Mr. H. filed for Supplemental Security Income and Child Disability Benefits  
20 in 2019. Previously, he was using money from his motor vehicle accident which  
21 expired on his 30th birthday. In both applications, Mr. H. alleged a disability since

1 October 1, 2004 due to a learning disability, anxiety, and depression. In 2020, he  
2 received an unfavorable decision. After filing for judicial review, this Court  
3 remanded the case for further administrative proceedings.

4 On May 6, 2024, a different ALJ issued another unfavorable decision. While  
5 Mr. H. was found to have several severe mental impairments, the ALJ determined  
6 these impairments had only a moderate impact on Mr. H.'s mental functioning.  
7 The ALJ also determined Mr. H. could perform work existing in the national  
8 economy. The ALJ considered the opinions of the following medical professionals:  
9 Drs. Tasmyn Bowes, Michael Brown, Bruce Eather, Emma Billings, Thomas  
10 Genthe, and David Widlan. The ALJ decision does not mention any consideration  
11 of opinions submitted by Dr. Luci Carstens. In its decision, the ALJ determined the  
12 opinions of Drs. Brown, Eather, and Billings were persuasive, but not the opinions  
13 of Drs. Bowes, Genthe, or Widlans. The ALJ also considered a Third-Party  
14 Function report completed by Mr. H.'s mother and her testimony from the 2020  
15 hearing, but found them to be inconsistent with the record as a whole. Mr. H.  
16 subsequently filed for judicial review.

## 17 ANALYSIS

18 This Court's review of a final decision of the Commissioner of Social  
19 Security is governed by 42 U.S.C. § 405(g). The scope of review is limited; the  
20 Commissioner's decision will be disturbed "only if it is not supported by  
21 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158

1 (9th Cir. 2012). If the evidence in the record “is susceptible to more than one  
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
4 F.3d 1104, 1111 (9th Cir. 2012).

5 Here, the parties agree the ALJ committed legal by failing to properly assess  
6 the persuasiveness of all proffered medical opinions. *See Stiffler v. O'Malley*, 102  
7 F.4th 1102, 1106 (9th Cir. 2024) (“the ALJ must assess the persuasiveness of each  
8 medical opinion after considering specified factors”). Specifically, did not account  
9 for Dr. Luci Carstens’s medical opinion. While the parties agree the ALJ  
10 committed reversible error, they disagree as to the appropriate remedy. Mr. H.  
11 contends the Court should remand his case for a finding of disability and  
12 immediate award of benefits. The Commissioner argues the Court should simply  
13 remand for further proceedings.

14 Generally, an ALJ’s failure to make adequate findings necessitates a remand  
15 for additional proceedings. *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981).  
16 Nevertheless, the Court has the power to affirm, modify, or reverse a decision with  
17 or without remanding for a rehearing. 42 U.S.C. § 405(g). “Courts have generally  
18 exercised this power when it is clear from the record that a claimant is entitled to  
19 benefits.” *Garrison v. Colvin*, 759 F.3d 995, 1019 (2014).

20 A three-part “credit-as-true” standard is used to determine when to remand  
21 to an ALJ with instructions to calculate and award benefits:

1 (1) the record has been fully developed and further administrative  
2 proceedings would serve no useful purpose; (2) the ALJ has failed to  
3 provide legally sufficient reasons for rejecting evidence, whether  
4 claimant testimony or medical opinion; and (3) if the improperly  
5 discredited evidence were credited as true, the ALJ would be required  
6 to find the claimant disabled on remand.

7 *Id.* at 1020. Each part “must be satisfied in order for a court to remand to an ALJ  
8 with instructions to calculate and award benefits.” *Id.* Furthermore, even if all three  
9 criteria are met, a reviewing court retains “flexibility” in determining whether to  
10 award benefits or remand. *Id.* at 1021. Remand is appropriate when “the record as  
11 a whole creates serious doubt that a claimant is, in fact, disabled.” *Id.*

12 Here, there are too many conflicts in the record for this Court to make a final  
13 disability determination. The Court recognizes there is compelling evidence in Mr.  
14 H.’s favor. Significantly, four of the seven doctors who evaluated Mr. H. have  
15 determined his mental health impairments have marked impacts on his ability to  
16 function. But there is also opposing evidence. For example, Dr. Billings, whom the  
17 ALJ deemed largely credible, opined that Mr. H.’s intellectual ability is in the  
18 average range and that he would likely be able to learn new information through a  
19 verbal modality. In addition, longitudinal evidence relied upon by the ALJ could  
20 be interpreted as demonstrating Mr. H.’s impairments have only a moderate impact  
21 on his ability to work. For example, Mr. H. can take care of his own hygiene and  
perform simple household chores. He enjoys video games and considers himself  
adept at using computers. And Mr. H. was able to volunteer several hours a week  
at the humane society and get along with his co-workers. While the longitudinal

1 evidence could be interpreted differently, it is not this Court's task to weigh  
2 competing inferences from the record.

3 The record does not clearly demonstrate Mr. H. is disabled. Remand is  
4 therefore required.

5 CONCLUSION

6 Having reviewed the record and the ALJ's findings, the Court concludes this  
7 matter must be remanded for further administrative proceedings.

8 Accordingly,

9 1. Plaintiff Mr. S.'s Brief, **ECF No. 8**, is **GRANTED in part and DENIED**  
10 **in part.**

11 2. Defendant Commissioner's Brief, **ECF No. 14**, is **GRANTED.**

12 3. This case is **RESERVED** and **REMANDED** for further administrative  
13 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

14 4. On remand, the Commissioner will develop the record as necessary; offer  
15 the claimant the opportunity for a hearing; reconsider all relevant issues; and issue  
16 a new decision.

17 5. Upon proper presentation, this Court will consider Plaintiff's application  
18 for costs, expenses, and reasonable attorney's fees under the Equal Access to  
19 Justice Act, 28 U.S.C. § 2412(a), (d).

1           **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
2 Order and provide copies to counsel. Judgment shall be entered for the  
3 Plaintiff, and the file shall be **CLOSED**.

4           **DATED** March 3, 2025.

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REBECCA E. PENNELL  
United States District Judge